Supreme Court, U.S.
FILED

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No. _____

In the
Supreme Court of the United States

Oscar Luna, Petitioner

v.

United States of America, Respondent.

On Petition for Writ of Certiorari/GVR to the 9th Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI AND/OR GVR

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QUESTION PRESENTED

Does a contact attorney interview ban against attorneys not of record which impedes hiring of retained counsel pretrial violate petitioner's right to counsel of choice and access to the courts?

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All parties to this action appear in the caption cover page to this petition.

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PETITION FOR WRIT OF CERTIORARI AND/OR GVR

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Oscar Luna respectfully petitions this Honorable Court for writ of certiorari reviewing the judgment of the United States Court of Appeals for the Ninth Circuit denying his 28 U.S.C. § 2255 motion to vacate judgment.

OPINION BELOW

The unpublished opinion/memorandum of the United States Court of Appeals for the Ninth Circuit is printed hereto as an Appendix.

JURISDICTION

The United States Court of Appeals decided this case February 25, 2002. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right to [ ] have the assistance of counsel for his defense."

The Fourteenth Amendment to the United States Constitution guarantees that no person shall be deprived "of life, liberty, or property without due process of law."

STATEMENT OF THE CASE

The county where Petitioner was held pretrial banned all private attorney contact interviews except to attorneys of record. Petitioner represented himself pro se with his former privately retained counsel as advisory counsel whom the county considered Petitioner's attorney of record.

Before trial Petitioner tried to hire counsel of and requested interviews with several prospective counsel theretofore. Because none of them were Petitioner's attorneys of record, the county jail denied them private interviews with Petitioner thus impeding Petitioner's right to hire private counsel of his choice. In enforcing said ban the county jail also stopped Petitioner's current counsel, then newly admitted to the Bar, who had slipped through the ban policy, from privately consulting with Petitioner thus frustrating said counsel's work otherwise unperformable through the telephone and glass barriers.

Encumbered with a rapidly approaching trial, lack of law library access, unwillingness of advisory counsel to bring the matter to the attention of the trial court, and general pains of incarceration, Petitioner's efforts to rectify the problem through the courts failed.

Petitioner was thus denied the right to hire private counsel of his choice, forced to try the case pro se and was convicted and sentenced to serve 30 years in prison. His appeal was affirmed. His 28 U.S.C. § 2255 presenting this question, among others, was summarily denied by the district court. The Court of Appeals issued a COA for it and affirmed without legal

citations holding the county jail's policy banning private attorney interviews against attorneys not of record was not inherently unreasonable.

REASONS FOR GRANTING PETITION

Review should be granted because a ban against private attorney-client contact interviews not of record which impedes the hiring of private counsel strikes at the very heart of the Sixth Amendment's guarantee to counsel of choice (see, *Wheat v. United States*, 486 U.S. 153, 158-59, 100 L.Ed.2d 140, 148-49, 108 S.Ct. 1692 (1988) and the Fourteenth Amendment's guarantee to meaningful access to the courts (*Procunier v. Martinez*, 416 U.S. 396, 419, 40 L.Ed.2d 224, 243, 94 S.Ct. 1800 (1974)). Because of the importance of those rights, this Court has long held that regulations and practices which unjustifiably obstruct or impede the availability of professional representation or other aspects of the right of access to the courts are invalid. *Ex parte Hull*, 312 U.S. 546, 85 L.Ed. 1034, 61 S.Ct. 640 (1941).

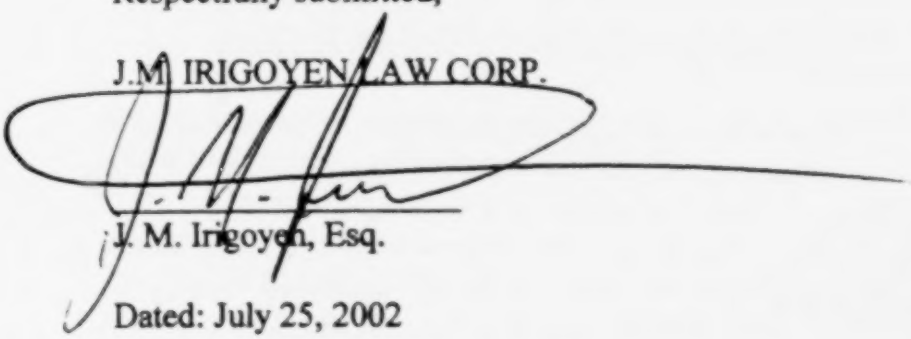
Because the Ninth Circuit's holding that jail policy restrictions to attorneys of record where they impede hiring counsel of choice are not inherently unreasonable does not square with *Ex parte Hull*, or *Procunier v. Martinez*, certiorari should be granted. Alternatively, the Court should grant the petition, vacate the judgment, and remand the case (GVR) for application and consideration of said cases. See, *Stutson v. United States*, 516 U.S. 193, 133 L.Ed.2d 571, 116 S.Ct. 600 (1996).

CONCLUSION

The petition for writ of certiorari and/or GVR should therefore be granted.

Respectfully submitted,

J.M. IRIGOYEN LAW CORP.



J. M. Irigoyen, Esq.

Dated: July 25, 2002

APPENDIX

United States Court of Appeals
for the Ninth Circuit
Filed Feb 25, 2002

MEMORANDUM* No. 00-17542

Before: D.W. NELSON, NOONAN and HAWKINS, Circuit Judges.

Appellant Oscar Luna ("Luna") appeals the denial of his 28 U.S.C. § 2255 motion to set aside or vacate his conviction on the basis that he was denied the opportunity, while in detention, to interview prospective replacement counsel. A disbarred lawyer, Luna had been represented by retained counsel, but was given permission to represent himself with his prior counsel remaining in an advisory role. Because Luna concedes that neither he nor advisory counsel told the district court of his possible change of heart, that court hardly be faulted for failing to provide Luna the opportunity to have such interviews. This leaves us with the claim that a jail policy restricting private, unsupervised interviews to counsel of record operates to deny a detainee meaningful access to the courts. But there is nothing inherently unreasonable about such a policy.

AFFIRMED

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.